SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 291

MARION B. KOTCH, JOHN L. RICHARDS, ADOLPH CLARK, ET AL.,

Appellants,

v.

BOARD OF RIVER PORT PILOT COMMISSIONERS FOR THE PORT OF NEW ORLEANS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

ARTHUR A. MORENO,
Counsel for Appellees.

SUPREME COURT OF LOUISIANA

No. 37,809

MARION B. KOTCH, ET AL.,

vs.

BOARD OF RIVER PORT PILOT COMMISSIONERS FOR THE PORT OF NEW ORLEANS, ET AL.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

Appellee believing that the matters hereinafter set forth demonstrate the lack of substance in the questions raised by this appeal, files this statement in opposition to appellant's statement as to jurisdiction. Appellee includes herein its motion to dismiss the appeal, or, in the alternative, to affirm the judgment of the Supreme Court of Louisiana on the ground that the questions raised on behalf of appellant are so insubstantial as not to need further argument.

The constitutionality of Act 54 of 1908, as amended by Act 134 of 1942, is attacked on the ground that it is violative of the Fourteenth Amendment of the Constitution of the United States. The Act is one enacted under the police power of Louisiana for the regulation of pilotage in the Port of New Orleans. The authority of the State to regulate pilotage was recognized in *Cooley* v. *The Board of Wardens of Philadelphia*, 12 How. 299. The authority of the State to prescribe qualifications and to limit the num-

ber of pilots has never been doubted. Compulsory pilotage has been a part of State regulation throughout this country. The constitutional power to nominate pilots and to prescribe their qualifications, and to compel the acceptance of their services, was recognized in *Ex Parte McNiel*, 13 Wall. 236.

In Louisiana, a pilot is a state officer, commissioned by the Governor. *State ex Rel. Egan, Attorney General* v. *Follette*, 33rd Ann. 228. No one has a constitutional right to be commissioned. It is within the authority of the Governor to grant or to withhold commissions without regulation or restriction. The very issue presented by this appeal was decided adversely to the appellant in *Olsen* v. *Smith*, 195 U. S. 332.

In that case, a statute of Texas conferred upon a board of five persons, appointed by the Governor, the power to fix charges to:

> "regulate the manner in which such pilots shall perform their duty, to examine them as to their qualifications, to hear complaints made against them, and if occasion requires, suspend them until the Governor shall act in the matter".

The difference between the Texas statute and the Louisiana statute is that the Board of River Port Pilot Commissioners in Louisiana is composed of three members, whereas in Texas, the Board was composed of five members The nature of their respective powers and duties is substantially the same. In that case, it was contended:

> "That because the commissioned pilots have a monopoly of the business and by combination among themselves exclude all others from rendering pilotage services".

The contention was there made, as is made here, that appellant could not become a commissioned pilot because of the alleged monopoly and combination.

The court said:

> "When the propositions just referred to are considered in their ultimate aspect, they amount simply to the contention, not that the Texas laws are void, for want of power, but that they are unwise".

The most searching analysis, using every instrument of logic and differentiation, can find no difference between the Texas statute and the Louisiana statute in matters of substance.

Because the question has been clearly and unqualifiedly decided against the appellant here, the appeal offers no substantial question for decision by this court.

WHEREFORE, appellee respectfully submits this statement to show that the questions upon which the decision of this case depends are so insubstantial as not to need further argument, and appellee respectfully moves the court to dismiss this appeal, or, in the alternative, to affirm the decree entered below.

(Signed) ARTHUR A. MORENO,
Attorney for Board of River Port Pilot Commissioners for the Port of New Orleans, T. J. McCarthy, Harry J. Post and C. J. Zatarain, Appellees.